MONTANA LEGISLATIVE HISTORY

Chapter 358 19 99

Bill H 59 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	1-13	✓ C	Hearing Date(s)	3-25	✓ C
	1-21	✓ C		3-25	✓ C
	2-17	✓ C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

HOUSE BILL NO. 59

INTRODUCED BY MOOD D

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE OFFENDERS AND OFFENSES SUBJECT TO THE SEXUAL AND VIOLENT OFFENDER REGISTRATION LAWS; AND AMENDING SECTIONS 46-18-201, 46-23-502, AND 46-23-509, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-734 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) payment of the costs of confinement;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(ix) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(x) community service;

(xi) home arrest as provided in Title 46, chapter 18, part 10;

(xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

(xiii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

(xiv) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xiii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs, as provided in 46-18-232, or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for a period not to exceed 5 years for placement in an appropriate correctional facility or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(g) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, order the offender to be placed in a prerelease center or prerelease program for a period not to exceed 1 year; or

(h) impose any combination of subsections (1)(b) through (1)(g).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of full restitution to the victim as provided in 46-18-241 through 46-18-249.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the

court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual <u>offense, as defined in 46-23-502(6)(a) or (6)(b),</u> or violent offense, as defined in 46-23-502, the court may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual offender program. If the person is subject to the provisions of 45-5-512, the person shall also, as provided in 45-5-512, undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, paid for by and for a period of time determined by the department of corrections. The period may not exceed the period of state supervision of the person.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program or a prerelease center or prerelease program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the court

subsequently sentences the offender to a state prison, the court shall state the reasons why it did not select an alternative to imprisonment, based on the criteria contained in 46-18-225.

(12) If a felony sentence includes probation, the department of corrections shall supervise the defendant unless the court specifies otherwise.

(13) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does not apply to a person sentenced under 46-18-219."

Section 2. Section 46-23-502, MCA, is amended to read:

"**46-23-502. Definitions.** As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(4) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(5) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.

(6) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-502(3), 45-5-503, 45-5-504(2)~~(c)~~, 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625; ~~or~~

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (6)(a); or

(c) any offense not referred to in subsection (6)(a) or (6)(b) if, in its discretion, the court, at the time of sentencing, finds that the offense was committed as a result of sexual compulsion or for purposes of sexual gratification, finds that the offender should be subjected to this part, and states in the record

the reasons for those findings.

(7) "Sexual or violent offender" means a person who has been convicted of a sexual offense or violent offense.

(8) "Sexually violent predator" means a person who has been convicted of a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses.

(9) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-201(3), 45-5-202, 45-5-206 (third or subsequent offense), 45-5-301 (when the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302, 45-5-303, 45-5-401, 45-5-603(1)(b), or 45-6-103; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (9)(a)."

Section 3. Section 46-23-509, MCA, is amended to read:

"**46-23-509. Sexual offender evaluations and designations -- rulemaking authority.** (1) The department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual offender and sexually violent predator evaluations and for determinations by sexual offender evaluators of the risk of a repeat offense and the threat that an offender poses to the public safety.

(2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender evaluator shall provide the court with a sexual offender evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

(3) Upon sentencing the offender, the court shall:

(a) review the sexual offender evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(4) An offender designated as a level 2 or level 3 offender may petition the sentencing court to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(5) At the time that an offender whose offense currently falls within the definition of sexual offense or violent offense but to whom this part did not apply or was not applied by the court at the time of sentencing is released from confinement, the department shall designate the offender as level 1, 2, or 3. If the designation is made on the basis of 46-23-502(6)(c), the department shall make the findings required by that subsection. An offender who disagrees with a level 2 or level 3 designation may petition the sentencing court as provided in subsection (4)."

- END -

FISCAL NOTE

Bill #: HB0059 **Title:** Revise laws governing sex offenders

Primary Sponsor: Douglas Mood **Status:** As introduced

Sponsor signature Date

Dave Lewis, Budget Director 1-4-99
Date

Fiscal Summary

	FY2000 Difference	FY2001 Difference
Expenditures:	0	0
Revenue:	0	0
Net Impact on General Fund Balance:	**0**	**0**

Yes	No		Yes	No	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

1. The fiscal impact of this bill is minimal as offender registration will be done by the Department of Justice (DOJ) sexual and violent offender registry coordinator. The coordinator position is funded by a grant through FY 1999. The DOJ will use a vacant position in the 2001 biennium to continue the work of coordinating and tracking the movement of over 2,000 sexual and violent offenders in Montana.
2. This bill has no fiscal impact to the Department of Corrections.

HB 59

HB 59 Introduced by Mood *LC0316 Drafter: MacMaster*

Authorize Plea Agreements Subjecting Offenders to the Sexual and Violent Offender Registration Laws;...

By Request of Department of Corrections

12/04	Introduced		
12/21	Referred to Judiciary		
1/04	1st Reading		
1/04	Fiscal Note Requested		
1/06	Fiscal Note Received		
1/06	Fiscal Note Signed		
1/06	Fiscal Note Printed		
1/13	Hearing		
1/21	Committee Executive Action--Bill Passed	12	8
1/22	Committee Report--Bill Passed		
1/30	2nd Reading Pass Motion Failed	40	60
2/01	Reconsidered Previous Action; Placed on 2nd Reading	59	35
2/01	Rereferred to Judiciary		
2/17	Committee Executive Action--Bill Passed as Amended	14	6
2/18	Committee Report--Bill Passed as Amended		
2/19	2nd Reading Passed	94	5
2/20	3rd Reading Passed	94	5
	Transmitted to Senate		
2/22	Referred to Judiciary		
3/25	Hearing		
3/26	Committee Executive Action--Bill Concurred as Amended	8	0
3/26	Committee Report--Bill Concurred as Amended		
3/27	2nd Reading Concurred	46	1
3/29	3rd Reading Concurred	46	1
	Returned to House with Amendments		
4/10	2nd Reading Senate Amendments Concurred	98	2
4/12	3rd Reading Passed as Amended by Senate	93	4
4/12	Sent to Enrolling		
4/14	Returned from Enrolling		
4/14	Signed by Speaker		
4/15	Signed by President		
4/16	Transmitted to Governor		
4/20	Signed by Governor		
4/22	Chapter Number Assigned		
	Chapter Number 358		
	Effective Date: 10/01/1999 - All Sections		

HB 60 Introduced by Cobb *LC0024 Drafter: Kurtz*

Raise the Cigarette Tax by 5.5 Cents to Provide State Matching Funds for the Children's Health Insurance Program and for Offsetting Costs Associated with Increased Medicaid Participation;...

12/07	Introduced
12/21	Referred to Taxation
1/04	1st Reading
1/04	Fiscal Note Requested
1/07	Fiscal Note Received
1/09	Fiscal Note Printed

HB 47 SPONSOR: Anderson, Shiell SHORT TITLE: Uniform statute of limitations for insurance actions
BY REQUEST OF: State Auditor
REFERRED ON: 12/21/1998 HEARD ON: 01/18/1999
EXECUTIVE ACTION: 01/22/1999 Bill Passed as Amended -- VOTE: 18 - 0
FINAL DISPOSITION 04/20/1999 Chapter Number Assigned

HB 48 SPONSOR: McGee, Dan SHORT TITLE: Revise and clarify certain sentence-related criminal procedures
BY REQUEST OF: Correctional Standards And Oversight Committee
REFERRED ON: 12/21/1998 HEARD ON: 01/07/1999
EXECUTIVE ACTION: 01/11/1999 Bill Passed as Amended -- VOTE: 19 - 0
FINAL DISPOSITION 03/16/1999 Chapter Number Assigned

HB 53 SPONSOR: Clark, Robert SHORT TITLE: Specify that a coroner (or deputy)shall pronounce the death at execution
BY REQUEST OF: Department Of Corrections
REFERRED ON: 12/21/1998 HEARD ON: 01/07/1999
EXECUTIVE ACTION: 01/19/1999 Bill Passed as Amended -- VOTE: 13 - 6
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

HB 54 SPONSOR: Menahan, Red SHORT TITLE: Creating the criminal offense of assault with a bodily fluid
BY REQUEST OF: Department Of Corrections
REFERRED ON: 12/21/1998 HEARD ON: 01/08/1999
TABLED ON: 01/19/1999
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

HB 59 SPONSOR: Mood, Douglas SHORT TITLE: Revise laws governing sex & violent offenders
BY REQUEST OF: Department Of Corrections
REFERRED ON: 12/21/1998 HEARD ON: 01/13/1999
REFERRED ON: 02/01/1999
EXECUTIVE ACTION: 01/21/1999 Bill Passed -- VOTE: 12 - 8
EXECUTIVE ACTION: 02/17/1999 Bill Passed as Amended -- VOTE: 14 - 6
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on January 13, 1999 at 8:00 A.M., in Room 312 - 2 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing Date: 1/13/99 HB 59,HB 106,HB 176,HB 143,

Date Posted: 1/7/99
Executive Action Taken: HB 65, Do Pass
HB 94, Do Pass
HB 76, Do Pass

Chairman Robert Clark opened the hearing.
{Tape : 1; Side : A; Approx. Time Counter : 0 - 37}

HEARING ON HB 59

Sponsor:

Rep. Mood presented HB 59.
{Tape : 1; Side : A; Approx. Time Counter : 37 - 61}

Proponents:

Diana Leibinger-Koch, Dept. of Corrections
{Tape : 1; Side : A; Approx. Time Counter : 61 - 233}

Opponents:
None

Informational Testimony:
None

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 233 - 550}
EXHIBIT(1)
{Tape : 1; Side : B; Approx. Time Counter : 0 - 119}

Closing by Sponsor:

Rep. Mood made closing statements.
{Tape : 1; Side : B; Approx. Time Counter : 119 - 145}

HEARING ON HB 106

Sponsor:

Rep. McColloch presented opening remarks on HB 106.
{Tape : 1; Side : B; Approx. Time Counter : 145 - 218}

Proponents:

Opponents:
None

Informational Testimony:
None

Questions from Committee Members and Responses:
{Tape : 3; Side : A; Approx. Time Counter : 0 - 70}

Closing by Sponsor:

Rep. Wyatt made closing statements.
{Tape : 3; Side : A; Approx. Time Counter : 70 - 79}

EXECUTIVE ACTION ON HB 143

Motion: REP. AHNER moved that HB 143 BE PASSED.
Motion: REP. MOLNAR moved that HB 143 BE TABLED.
that motion failed. 8 votes to 12 votes.
Motion/Vote: REP. YOUNKIN moved that HB 143 BE PASSED AS AMENDED. Motion carried unanimously.
Motion/Vote: REP. MCGEE moved that HB 143 BE TABLED. Motion failed 9-11.

(Rep. Younkin left the room)

Motion/Vote: REP. ANDERSON moved that HB 143 BE POSTPONED. Motion failed 8-11.
Motion/Vote: REP. AHNER moved that HB 143 BE PASSED AS AMENDED. Motion failed 8-12 with Ahner, Anderson, Clark, Clark, Curtiss, Eggers, Facey, Jore, McGee, Molnar, Noennig, and Shockley voting nays.

Reversed the vote and TABLED.
{Tape : 3; Side : A; Approx. Time Counter : 79 - 550}
{Tape : 3; Side : B; Approx. Time Counter : 0 - 146}

EXECUTIVE ACTION ON HB 59

Motion/Vote: REP. AHNER moved that HB 59 BE PASSED. Motion carried 12-8 with Gallus, Gutsche, Hurdle, Jore, McGee, Molnar, Shockley, and Williams voting no.
{Tape : 3; Side : B; Approx. Time Counter : 146 - 190}

EXECUTIVE ACTION ON HB 366

Motion: REP. MCGEE moved that HB 366 WITH SUB-COMMITTEE AMENDMENTS DO PASS. AMENDMENTS PASSED. Motion/Vote: REP. MCGEE moved that HB 366-MOVE AMENDMENTS DO PASS AS AMENDED. Motion carried 16-4 with R. Clark, Curtiss, Jore, and Molnar voting no.
{Tape : 2; Side : A; Approx. Time Counter : 344 - 550}
{Tape : 2; Side : B; Approx. Time Counter : 0 - 460}

EXECUTIVE ACTION ON HB 243

Motion/Vote: REP. WYATT moved that HB 243 BE TABLED. Motion carried 18-2 with R. Clark and Jore voting no.
{Tape : 2; Side : B; Approx. Time Counter : 460 - 479}

EXECUTIVE ACTION ON HB 59

Motion: REP. NOENNIG moved that HB 59- DO PASS.
Motion/Vote: REP. NOENNIG moved that HB 59 BE AMENDED. Motion carried 20-0.
Motion/Vote: REP. NOENNIG moved that HB 59 DO PASS AS AMENDED. Motion carried 14-6 with Eggers, Facey, Gallus, Gutsche, Hurdle, and Williams voting no.

EXHIBIT(1)

{Tape : 3; Side : A; Approx. Time Counter : 0 - 211}

EXECUTIVE ACTION ON HB 104

Motion: REP. AHNER moved that HB 104 DO PASS.
Motion: REP. MCGEE moved that HB 104 BE AMENDED. AMENDMENTS PASSED. Motion/Vote: REP. AHNER moved that HB 104 DO PASS AS AMENDED. Motion carried 15-5 with Ahner, Curtiss, Jore, McGee, and Molnar voting no.

EXHIBIT(2)

{Tape : 3; Side : A; Approx. Time Counter : 211 - 350}

EXECUTIVE ACTION ON HB 127

Motion/Vote: REP. GUTSCHE moved that HB 127-OFFER MCMASTER AMENDMENTS BE AMENDED. Motion carried 18-2 with Anderson and Younkin voting no.

HB 54 SPONSOR: Menahan, Red SHORT TITLE: Creating the criminal offense of assault with a bodily fluid
BY REQUEST OF: Department Of Corrections
REFERRED ON: 03/01/1999 HEARD ON: 03/25/1999
EXECUTIVE ACTION: 03/26/1999 Bill Concurred as Amended -- VOTE: 8 - 0
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

HB 59 SPONSOR: Mood, Douglas SHORT TITLE: Revise laws governing sex & violent offenders
BY REQUEST OF: Department Of Corrections
REFERRED ON: 02/22/1999 HEARD ON: 03/25/1999
EXECUTIVE ACTION: 03/26/1999 Bill Concurred as Amended -- VOTE: 8 - 0
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

HB 65 SPONSOR: Ahner, Chris SHORT TITLE: Extend intervention in delinquency pilot program
BY REQUEST OF: Department Of Corrections
REFERRED ON: 01/27/1999 HEARD ON: 03/05/1999
EXECUTIVE ACTION: 03/16/1999 Bill Concurred -- VOTE: 8 - 0
FINAL DISPOSITION 03/25/1999 Chapter Number Assigned

HB 76 SPONSOR: Somerville, Roger SHORT TITLE: Revise sex offender registration public criminal justice information
REFERRED ON: 01/27/1999 HEARD ON: 03/09/1999
EXECUTIVE ACTION: 03/17/1999 Bill Concurred -- VOTE: 5 - 4
FINAL DISPOSITION 04/06/1999 Chapter Number Assigned

HB 81 SPONSOR: Menahan, Red SHORT TITLE: Revise sentence for youths who commit serious offense
REFERRED ON: 01/27/1999 HEARD ON: 03/05/1999
EXECUTIVE ACTION: 03/23/1999 Bill Concurred as Amended -- VOTE: 6 - 0
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

HB 94 SPONSOR: Cobb, John SHORT TITLE: Make permanent AG's duty to represent state's interest in bankruptcy proceedings
BY REQUEST OF: Department Of Justice
REFERRED ON: 01/27/1999 HEARD ON: 03/08/1999
EXECUTIVE ACTION: 03/08/1999 Bill Concurred -- VOTE: 8 - 0
FINAL DISPOSITION 03/17/1999 Chapter Number Assigned

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 25, 1999 at 8:21 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Jodi Pauley, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 54, 3/19/1999; HB 59, 3/19/1999; HB 482, 3/19/1999; HB 185, 3/19/1999
Executive Action: HB 339; HB 459; HB 566

EXECUTIVE ACTION ON HB 459

Discussion:

Valencia Lane explained the amendments for **HB 459. EXHIBIT(1)**

Closing by Sponsor:

REP. MENAHAN said the idea is not to go out and take over a facility. He said they will have the sessions of 2001 and 2003 to review this. He said they had a student that committed suicide in the Anaconda/Deer Lodge County Jail during the night and no one checked on any activities during the night and the county might be liable for that. He said most jails don't even have a procedure manual for putting people in jail, etc.

SEN. BISHOP took over the chair.

HEARING ON HB 59

Sponsor: REP. DOUG MOOD, HD 58, Seeley Lake

Proponents:

Diana Leibinger-Koch, Department of Corrections
Sandy Heaton, Clinical Director of the Sex Offender Program at MT State Prison

Opponents: None

Opening Statement by Sponsor:

REP. DOUG MOOD, HD 58, Seeley Lake, said under the current law an individual who commits a sexual offense and then commits a further crime can plea bargain out of the sexual offense in the process of pleading guilty for murder, etc. When that individual gets out in society there is no notification to the members of society that his motivation for his crime was a sexual offense. He said under this bill the judge can now order an offender to register as a sex offender, but only if the offender agrees to that in the plea bargain arrangement. He read the criteria set forth in the bill concerning plea bargaining arrangements. He said the defendant must plead guilty to a sex offense or agree to register in the plea bargaining agreement or be convicted of the sexual offense.

Proponents' Testimony:

Diana Leibinger-Koch, Department of Corrections, used some examples of a few cases concerning this bill. Case number one was an offender who molested a young girl from the age of 8 to 11 years old. The county attorney originally charged this man with felony, sexual assault, indecent exposure, and endangering the welfare of children. But during the plea bargain it was pleaded down to a non-registered sex offense of just regular assault. He

does not have to register as a sex offender and the community has no idea that this man is a sex offender. She said another case was an offender was charged with felony sexual assault, but during the course of his case he picked up a bail jumping charge. When they found him he plea bargained guilty to only the bail jumping charge and the felony sexual charge was dismissed. She said in another example a man sexually molested a 14 year old girl, raped her, and then stabbed her. He was charged with attempted deliberate homicide, sexual assault, etc. During the plea bargain the state dismissed the sex offenses as he pleaded guilty to deliberate homicide. He does not have to register as a sex offender when he gets out of prison. She cited other cases that dealt with sexual offenses. She said these example are not meant to be a criticism of prosecutors and the plea bargaining system. She said under this bill the prosecutor could of included registration as part of the plea bargain agreement. This bill does not in any way change the current sex offender registration requirements. This is a public safety issue. In the original bill it had the ability of the judge to require the person to register as a sex offender even if that was not what they were being charged for. This is no longer in the bill. The defendant must agree in a plea bargain agreement to register as a sex offender. She said there are five other states in which a judge can require this registration regardless of whether they plead guilty of a sexual offense or not.

{Tape : 2; Side : B; Approx. Time Counter : 10:40 a.m.}

Sandy Heaton, Clinical Director of the Sex Offender Program at MT State Prison, said this bill would allow them to do the registration and let law enforcement know what tier level these offenders are when they leave. This is a community safety issue and will help law enforcement. It will change the kind of supervision that needs to be done when they are in the community. The level of risk for a rapist to repeat his action is much higher than that of a murderer. She said she has seen sexual components to crimes all the way from burglary to murder.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. HALLIGAN asked how does the public defender's side work on the plea bargain. He asked why would they ever agree to have a sexual offense included. **Diana Leibinger-Koch** said the prosecutor could persuade someone to plead guilty of a crime for less of a punishment if they agreed to registered as a sex offender. She said a lot of criminals do not want to go to prison with a sex offense because they take it tough in prison.

SEN. HALLIGAN read subsection 5, on page 6. He asked even though a person has an underlying sexual offense that they never plead guilty to, would they not fall under subsection 5. **Diana Leibeinger-Koch** said that is correct. She said subsection 5 applies to people in prison right now with a sexual offense on their record. It does not apply to people who don't have the registration requirement right now. She said this only applies to a person leaving prison and they have the sex offense on their record.

SEN. HALLIGAN asked if this is a double jeopardy issue with respect to the enhanced penalty. **Diana Leibinger-Koch** said the department cannot impose a lifetime registration requirement.

SEN. HALLIGAN asked if they designate offenders as a one, two or three. **Diana Leibinger-Koch** said that was correct. Section 5 does have the department designate an offender as a one, two or three level. The bulk of Supreme Court cases right now does not say registration is a punishment and it is not an offense for the purpose of due process. She said it is only a procedural requirement and not a punishment.

SEN. HALLIGAN asked if that has been litigated. **Diana Leibinger-Koch** said yes that has been litigated in several circuit court cases.

SEN. GRIMES said he likes the original language in which the court might decide to include a sexual offense. He asked when the committee removed that language what did they insert in place of that. **REP. MOOD** said there were several that were concerned about due process.

SEN. GRIMES said they struck section 2 and did they add any new language. **Diana Leibinger-Koch** said they inserted the new section on page 5 in place of the first section.

CHAIRMAN GROSFIELD said there could be some Constitutional problems on page 6, lines 1-4 and 15-16. He asked what would the bill look like if they struck section 2. **Diana Leibinger-Koch** said the level designation section is applied after someone has been designated a sex offender. The level designation determines what level of community notification there will be. The department is not designating someone a sex offender. They are helping law enforcement by telling them what they think the designation should be so they can release the appropriate information to the community. This is why there is no Constitutional issues here.

CHAIRMAN GROSFIELD said if they designate someone as a level 3 they are imposing an additional sentence in a sense of lifetime registration. **Diana Leibinger-Koch** said the lifetime registration has already been imposed on these people.

CHAIRMAN GROSFIELD said prior to 1995 anyone that was in prison on a sexual offense, lifetime registration didn't apply to them. But it sounds like they are applying level designations to prisoners who are released that were in before that law came into effect. **Diana Leibinger-Koch** said last session they imposed an applicability section onto the registration section. This applied to anyone who was in the custody of the department after 1989.

SEN. GRIMES asked if the sex offender's name and address will be published and does that apply to all sex offenders even if they haven't received a level designation. **Diana Leibinger-Koch** said the name and approximate address will be published for a level one but the exact address could be released for a level two or three designator.

Closing by Sponsor:

REP. MOOD said sex offender notification is very important for our communities and there are many that escape from registering and this bill addresses that.

{Tape : 2; Side : B; Approx. Time Counter : 11:04 a.m.}

HEARING ON HB 482

Sponsor: **REP. JEFF MANGAN, HD 45, Great Falls**

Proponents:

Anita Roessmann, Attorney for Montana Advocacy Program
Kellie Gibson, Cascade County Juvenile Detention Center
Valerie Weber Rasch, Director of Youth Center in Billings,
Peggy Beltrone, Cascade County Commissioner
Donna Maddix, Flathead County Superintendent of Schools
Allen Horsfall, Montana Board of Crime Control
Bill Kennedy, Yellowstone County Commissioner
Jani McCall, MT Youth Justice Council
Craig Anderson, MT Youth Justice Council
Steve Nelsen, MT Youth Justice Council

Opponents:

Dennis McCave, Yellowstone County Detention Facility

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY
SECOND MEETING

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 25, 1999 at 4:30 p.m. in Room 325 Capitol. Note: This is the second meeting of the day.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)

Members Excused: Sen. Reiny Jabs (R)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: None
Executive Action: HB 361, HB 407, HB 339, HB 109, HB 482, HB 54, HB 59 HB 255

EXECUTIVE ACTION ON HB 361

Motion/Vote: **SEN. HALLIGAN** moved that **HB 361 BE CONCURRED IN.** **Motion carried unanimously - 8-0.**

EXECUTIVE ACTION ON HB 59

Motion: **SEN. HALLIGAN** moved that **HB 59 BE AMENDED, HB005901.avl, EXHIBIT(6).**

Discussion:

Ms. Lane commented that there was some concern that on page 6 of the bill, subsection (5) was not clear on when it would be applicable in terms of persons who had or had not been designated sex offenders. This has been rewritten. Amendment no. 5 strikes the existing (5) and replaces it with new language which clarifies that it only applies to persons who are already required by law to register but were not given a level designation at the time of sentencing. It would require the Department of Corrections to give them a designation when released from confinement.

There was also concern regarding the wording of new Section 1 on plea bargain agreements. Her understanding is that the term "plea bargain" does not appear in the code and the term "plea agreements" is used.

SEN. GRIMES asked that the amendments be segregated between the two sections.

Ms. Lane explained that amendments no. 2 and 5 would group together and amendments nos. 1, 3, and 4 would group together.

Substitute Motion/Vote: **SEN. HALLIGAN** moved that **HB 59 BE AMENDED, HB005901.avl, AMENDMENTS NOS. 1, 3, AND 4. The motion carried unanimously - 8-0.**

Substitute Motion: **SEN. HALLIGAN** moved that **HB 59 BE AMENDED, HB005901.avl, AMENDMENTS NOS. 2 AND 5.**

Discussion:

SEN. GRIMES claimed that it wouldn't matter who the offender was or what designation had been assigned and this would now be public information. The information may not be disseminated like it is in level two or level three, but it is still a matter of public record.

Vote: Motion **carried unanimously - 8-0.**

Motion/Vote: **SEN. MCNUTT** moved that **HB 59 BE CONCURRED IN AS AMENDED. Motion carried unanimously - 8-0.**